

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD MERINO, DANY CUX BATEN,
ELIAS ANTONIO HERNANDEZ, and JORGE
OREA PAEZ, individually and on behalf
of all others similarly situated,

Plaintiffs,

- against -

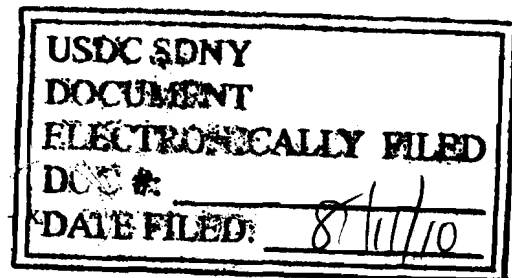
BEVERAGE PLUS AMERICA CORP., SMC
USA CORP., YUN S. CHO, GRAND
BEVERAGE CORP., and YUN C. CHO,

Defendants.

10 Civ. 0706 (JSR)

ECF CASE

DEFAULT JUDGMENT
AGAINST SMC USA CORP.



JED S. RAKOFF, District Judge:

WHEREAS on February 11, 2010, defendant Yun S. Cho personally accepted service of the Summons and Complaint served on himself and defendants SMC USA Corp., Beverage Plus America Corp. and Beverage Plus, Inc. (Dkt. Nos. 5-8); and

WHEREAS on March 5, 2010, plaintiffs filed a First Amended Complaint reflecting retaliatory conduct toward plaintiff Merino and adding defendant Grand Beverage Corp; which was served on defendants SMC USA Corp., Beverage Plus America Corp., Beverage Plus, Inc. and Grand Beverage Corp. through the New York Department of State's Division of Corporations on March 16, 2010; and which defendant Yun S. Cho personally accepted service of on behalf of himself and defendants SMC USA Corp., Beverage Plus America Corp., Beverage Plus, Inc. and Grand Beverage Corp on March 17, 2010 (Dkt. Nos. 11-14, 16-20); and

WHEREAS on May 27, 2010, plaintiffs filed a Second Amended Complaint alleging plaintiff Merino's retaliatory firing and adding Yun C. Cho as a defendant, which Yun C. Cho personally accepted service of on June 1, 2010 (Dkt. No. 44), and which plaintiffs mailed and emailed to SMC USA Corp. and the other defendants on May 27, 2010;

WHEREAS the Court instructed defendants in open court on March 29, 2010, after defendants had fired their first attorney, that the corporate defendants could not appear pro se in this action and that failure to retain counsel would result in a default against the corporate defendants; and

WHEREAS defendants then retained a new attorney in April 2010, and at a court conference on May 18, 2010, the Court granted that second attorney's request to be relieved as counsel, which defendants did not oppose; and

WHEREAS at the May 18, 2010 court conference the Court again instructed defendants that the corporate defendants could not appear pro se in this action and that failure to retain counsel would result in a default against the corporate defendants, and granted a one week stay of proceedings to allow defendants to retain alternate counsel; and

WHEREAS defendant SMC USA Corp. and the other corporate defendants did not retain counsel after the May 18, 2010 court conference or at any point thereafter; and

WHEREAS by Order dated June 16, 2010, the Court stated that on May 18, 2010 it had issued a one week stay of the proceedings to allow defendants to obtain

counsel and that defendants had failed to obtain new counsel, and granted plaintiffs' request to move for default judgment (Dkt. 45); and

UPON CONSIDERATION of plaintiffs' motion for default judgment against SMC USA Corp. on the issue of liability on plaintiffs' collective action minimum wage and overtime claims pursuant to the Fair Labor Standards Act of 1938 ("FLSA"), as amended 29 U.S.C. §§ 201 et seq.; plaintiffs' class action minimum wage, overtime, spread of hours and unlawful deductions claims pursuant to 12 N.Y. Code of Rules and Regulations §§ 142 et seq., promulgated and enforced under the New York Minimum Wage Act ("NYMWA"), N.Y. Labor Law §§ 650 et seq.; and plaintiff Merino's retaliation claims pursuant to FLSA, 29 U.S.C. § 215(a)(3) and the N.Y. Labor Law § 215 for failure to defend the above-captioned action because SMC USA Corp. has not retained counsel;


IT IS HEREBY ORDERED that judgment be entered in favor of plaintiffs and against SMC USA Corp. as to liability on (a) plaintiffs' collective action minimum wage and overtime claims pursuant to the FLSA, (b) plaintiffs' class action minimum wage, overtime, spread of hours and unlawful deductions claims pursuant to the NYLL and (c) plaintiff Merino's retaliation claim pursuant to the FLSA and NYLL; and

IT IS FURTHER ORDERED that plaintiffs shall serve a copy of this

Order on SMC USA Corp. via registered mail, by 8/16, 2010.

Magistrate Judge Ellis will conduct an
exigent to determine damages
SO ORDERED.

Dated: 8-10-, 2010
New York, New York


JED S. RAKOFF
UNITED STATES DISTRICT JUDGE